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No. 00-404

IN THE

Supreme Court of the United States

NORTHWEST AIRLINES, INC.,

Petitioner,

v.

JULIE DUNCAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* AIR TRANSPORT ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONER

ROBERT S. SPAN
Counsel of Record
NEAL D. MOLLEN
PAUL, HASTINGS, JANOFSKY
& WALKER LLP
Attorneys for Amicus Curiae
Air Transport Association of America
555 South Flower Street
Los Angeles, California 90071
(213) 683-6000

162866

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

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QUESTION PRESENTED

Did the court of appeals err when it held — despite the "deliberately expansive" preemptive sweep of the Airline Deregulation Act of 1978, *Morales v. Trans World Airlines*, 504 U.S. 374, 384 (1992) — that states and localities are free to regulate the services a commercial airline can or must provide, so long as the state or locality does not prescribe (a) the cities to which the carrier can fly; (b) the times at which the carrier offers its flights or frequency with which it flies them; or (c) the price the carrier charges for its services?

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INTERESTS OF THE *AMICUS CURIAE*[1]

1. The Air Transport Association of America ("ATA") is a membership organization of 23 U.S. certificated air carriers. ATA's members account for more than 97% of the domestic passenger and cargo traffic flown annually by U.S. carriers, and employ over half a million people.[2] ATA regularly represents the interests of its member carriers in legislative, judicial and administrative matters. ATA has filed numerous *amicus* briefs in this Court and in other federal and state court proceedings concerning a broad variety of cases related to the safe and efficient operations of air carrier operations.[3] ATA also works closely with various Federal agencies that regulate the airline industry such as the Federal Aviation Administration and the Department of Transportation.

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1. Petitioner and Respondent have consented to the filing of this brief and their consent letters are filed herewith. Northwest Airlines is a member of ATA, but no party has authored this brief in whole or in part and no party has made a monetary contribution to the preparation or filing of this brief.

2. ATA's members are Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International, Federal Express, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways. Associate members are Aerovias de Mexico, Air Canada, Canadian Airlines International, KLM-Royal Dutch Airlines, and Mexicana de Aviacion.

3. *See, e.g., Eastern Assoc. Coal Corp. v. United Mine Workers of America, Dist. 17*, No. 99-1038 (S. Ct.); *Sutton v. United Airlines*, 527 U.S. 471 (1999); *Northwest Airlines v. Air Line Pilots Association*, 486 U.S. 1014 (1988).

2. This case was brought under Washington tort law by flight attendants who claim that they were injured by second-hand smoke on Northwest Airlines flights to Asia. The district court held that to the extent Washington tort law would otherwise have applied to this scenario, it was preempted by the Airline Deregulation Act of 1978 ("ADA"), which prohibits any state attempt to regulate services provided by a covered airline. The Ninth Circuit reversed.

3. The issues posed by this case are of vital concern to ATA's members. First, the court of appeals decision in this case both exemplifies and exacerbates a profound difference of opinion among the courts of appeals regarding the degree to which the services provided by airlines may be prescribed, or proscribed, by states and localities around the country. Because each of ATA's members does business in a number of states — and some do business in nearly every state — this persisting conflict of opinion on a matter of federal law fundamental to the operations of the airline business creates unacceptable uncertainty and confusion. More than anything else, ATA's members seek a single, clear, and reliable rule of law to which they can look for purposes of planning and compliance.

Second, the substantive rule of law embraced by the court of appeals cedes to every state (and presumably every political subdivision within every state) the authority to dictate to ATA's members the services they must — or may not — provide, so long as the regulating authority steers clear of dictating where and when the airline flies and the prices it charges. This reading of the Airline Deregulation Act is unjustified as a matter of statutory construction, as explained *infra*, but even more, it subjects the airlines to precisely the sort of varying, even incompatible, obligations that Congress

attempted to avoid when it passed the ADA. Airlines simply cannot compete as Congress intended, or function as efficient, affordable tools of interstate commerce, if their in-flight services are subject to the regulatory dictates of states and local governments.

Third, smoking on commercial air carriers has been regulated by the Federal government for decades, first by Civil Aeronautics Board and subsequently by the Department of Transportation (*see* 14 C.F.R. Part 252) — and the FAA has regulated on the subject of cabin air quality and ventilation.[4] 14 C.F.R. § 25.831 (2000). The regime constructed by the court below, however, places these matters simultaneously within the jurisdiction of these federal agencies *and* every community in which an ATA member operates. This result is simply unacceptable, and complicates the efforts of ATA member airlines to deliver on the promise of "an air transportation system relying on actual and potential competition — (A) to provide efficiency, innovation and low prices; and (B) to decide on the variety and quality of . . . air transportation services." 49 U.S.C. § 40101(a)(12).[5]

ATA is uniquely situated to inform the Court regarding the industry's perspective on these critical matters. For

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4. *See* 14 C.F.R. Part 252; *Allowable Carbon Dioxide Concentration in Transport Category Airplane Cabins*, pt. II, 59 Fed. Reg. 22718 (1994).

5. The issue of the Federal Aviation Administration's broad, exclusive authority over the safety of air transportation, and therefore "field" preemption under the Federal Aviation Act, was not raised below, decided by the court of appeals, or raised in the petition. Therefore that issue is not before the Court.

these reasons, ATA seeks to participate in this case as *amicus curiae*.

SUMMARY OF ARGUMENT

1. A principal animating purpose of the ADA was "to rationalize [the] confusing system of dual regulation of federally certificated air carriers" in place in 1978.[6] That desired goal has been frustrated, however, by a persisting division of authority over the proper construction to be given the Act's express preemption provision, which forbids state and local governments from exercising dominion over matters "related to a price, route, or service" of covered airlines. 49 U.S.C. § 41713(b)(1).[7] At least eight circuits have weighed in on the controversy, and they have devised at least three different approaches to parsing the language of the Act. Two circuits — the Third and the Ninth — have given the provision the unjustified, parsimonious construction at issue here. In varying degree, three others — the Fourth, Fifth, and Seventh — have given a more natural reading to the statute, and thus have given the statute a more vigorous preemptive force. The Second and Eleventh Circuits have developed their own balancing tests, with uncertain implications for the statute's preemptive reach.

This conflict, on an important and recurring issue of federal law, is intolerable. As Congress recognized in passing the ADA, airlines, by their very nature, need a single, reliable standard in order to permit vigorous competition and to

6. S. Rep. No. 95-631, at 98 (1978).

7. In 1994, Congress amended the ADA, *inter alia*, to change the statutory term "rates" to "price." As the court of appeals noted, the change was intended to be non-substantive. Pet. App. 3a n.4.

operate efficiently and effectively in the public interest. The varying interpretations given this important provision have frustrated that goal. Indeed, Delta Air Lines — an ATA member — has litigated the ADA's preemption provision in four different courts of appeals and has received four different, and in some instances mutually exclusive, answers regarding its scope.[8]

The lower courts have acknowledged this confusion, and have expressed no small degree of frustration at the lack of definitive guidance at their disposal. This case offers an ideal opportunity to resolve the existing conflict and establish one preemption standard regarding airline "services" by which future cases might be judged.

2. Before enacting the ADA, Congress considered a number of proposals to limit the scope of state and local interference with airline economic and competition-based decisions. The one it adopted is "conspicuous for its breadth" — a "deliberately expansive" rule of exclusion[9] that prohibits states and localities from interfering with any matters "related to [an air carriers'] price, route, *or service*. . . ." 49 U.S.C. § 41713(b)(1) (emphasis added).

According to the court of appeals, however, a state rule of law or regulation falls within the scope of this phrase only if it dictates the "prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or

8. *Compare Hodges v. Delta Airlines*, 44 F.3d 334 (5th Cir. 1995), *with Taj Mahal Travel, Inc. v. Delta Airlines*, 164 F.3d 186 (3d Cir. 1998); *Parise v. Delta Airlines*, 141 F.3d 1463 (11th Cir. 1998); *and Abdu-Brisson v. Delta Airlines*, 128 F.3d 77 (2d Cir. 1997).

9. *Morales v. Trans World Airlines*, 504 U.S. 374, 384 (1992).

mail." Pet. App. 4a. Because "prices, schedules, origins and destinations" are undeniably items relating to an airline's "prices" and "routes," the construction adopted by the court of appeals reads the word "services" out of the statute altogether.

That result is untenable as a matter of statutory construction. This Court has repeatedly, and recently, admonished that every word of a statute must be given life if at all possible, and, more specifically, that each word in a statute should be given its natural and commonplace meaning. *See infra* at 10. The court below breached this fundamental rule.

REASONS FOR GRANTING THE WRIT

I. REVIEW BY THIS COURT IS NECESSARY TO RESOLVE A PATENT CONFLICT AMONG THE CIRCUITS ON AN IMPORTANT ISSUE OF FEDERAL LAW

This Court has noted that there are circumstances in which divisions of opinion among the circuit courts on questions of federal law are tolerable. For example, a split of authority may concern a question of law that is technical or unimportant, or that arises too infrequently, to warrant treatment by the Court. Similarly, the Court has declined to review cases involving circuit splits — even on important issues — where only a few lower courts have addressed the issue and the questions presented require "further study" in the lower courts.[10] Finally, the Court has declined to review

10. *See McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J.; dissenting from the denial of *cert.*); *Gilliard v. Mississippi*, 464 U.S. 867 (1983) (Brennan, J. and Marshall, J.; dissenting from the denial of *cert.*).

cases where a disagreement among the courts of appeals on a matter of law has been overtaken by subsequent events — for example, when the underlying statute has since been amended or has expired.[11] None of these circumstances is present here.

1. There is a patent and intractable conflict among the lower courts on a question of vital importance. Congress passed the Airline Deregulation Act of 1978 in substantial part "to rationalize [the] confusing system of dual regulation of federally certificated air carriers" then in place. S. Rep. No. 95-631, at 98 (1978). The committee responsible for drafting the Act intended that "*only one standard of regulation* be provided for airlines operating under the authority" of federal law. *Id.* (emphasis added).

This primary legislative goal of the Act has been frustrated by varied interpretations of the express preemption provision of the statute, codified at 49 U.S.C. § 41713(b)(1). That subsection preempts any provision of state or local law "related to a price, route, or service of an air carrier. . . ." Three courts of appeals have agreed that the term "service" as used in this section denotes "a bargained-for or anticipated provision of labor from one party to another." *Hodges v. Delta Airlines*, 44 F.3d 334, 336 (5th Cir. 1995); *see also Smith v. Comair, Inc.*, 134 F.3d 254 (4th Cir. 1998); *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423 (7th Cir. 1996). Thus, in these circuits, "[e]lements of the air carrier service bargain include items such as ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself." 44 F.3d at 336 (emphasis omitted).

11. *See, e.g., United States v. Abrams*, 344 U.S. 855 (1952).

In the Third and Ninth Circuits, the meaning of the word "service" is markedly different — resulting in substantially greater power for states and localities to enact mandates or prohibitions relating to airline practices traditionally viewed as services on which airlines compete. In these circuits, and as explained by the court below in this case, the term "service" has no meaning in the context of this statute independent from the terms "price" and "route." Pet. App. 4a-6a; *Taj Mahal Travel, Inc. v. Delta Airlines*, 164 F.3d 186 (3d Cir. 1998). Specifically, the court below explained that " '[r]ates' indicates price; 'routes' refers to courses of travel. It therefore follows that 'service,' when juxtaposed to ['price'] and 'routes,' refers to such things as frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided." Pet. App. 5a. In these circuits, the term service does *not* include "provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities." *Id.*

In the Eleventh Circuit, the analysis is more quantitative than qualitative. There, a law relating to airline services becomes preempted only if compliance with the law "would have a significant impact upon the airlines' ability to market their product, and hence a significant impact upon the fares they charge." *Parise v. Delta Airlines*, 141 F.3d 1463, 1465 (11th Cir. 1998).

Finally, in the Second Circuit, the term takes on an uncertain meaning unconnected to any commonly accepted definition of the term. *Abdu-Brisson v. Delta Airlines*, 128 F.3d 77, 84 (2d Cir. 1997). Rather, in that circuit, a court is to ask itself whether, in a particular instance, "the dangers and hardships of diverse regulation justify

foreclosing a State from the exercise of its traditional powers." *Id.* (citation omitted).

As a result of this chaotic state of affairs, a county board of supervisors in California could, for example, prohibit an airline from showing any in-flight movies, another community, perhaps even another community in California, could require them to be shown, while a third community in Illinois would be prohibited from regulating on the subject altogether.

There is one undeniable fact at work in all of these cases: "[i]n the absence of definitive guidance from the Supreme Court, the Courts of Appeals have struggled [and will continue to struggle] with the relationship between the Act's preemption clause and state tort claims." *Taj Mahal Travel*, 164 F.3d at 192.

2. The meaning of the ADA's preemption language arises with great frequency. Just since the beginning of 1995, the year when this Court issued its last ADA preemption decision, there have been approximately 50 reported decisions debating the scope of the ADA's preemption provision. *See* appendix to this brief.

3. Review in this Court would not be premature. Eight courts of appeals have published decisions since 1995 on the scope of ADA preemption — seven on the meaning of the word "service" as it is used in that statute — and the resulting rules of law are disparate and irreconcilable. This disparity is incompatible with Congressional design — *i.e.*, "to rationalize [the] confusing system of dual regulation of federally certificated air carriers" in place prior to passage of the ADA, and it frustrates the competitive goals at the

heart of the Act.[12] This controversy is a live and important one, and it will not go away unless and until this Court resolves the matter.

II. THE COURT BELOW ERRED

A. The Court Of Appeals' Reading Of The ADA Preemption Provision Violates Rudimentary Principles Of Statutory Construction

This Court has marked out the proper procedure for analyzing statutory language on many occasions. The process is supposed to begin (and often will end) with the language of the statute itself.[13] "It is our duty 'to give effect, if possible, to every clause and word of a statute' rather than to emasculate an entire section. . . ." *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (citation omitted); *accord National Endowment for the Arts v. Finley*, 524 U.S. 569, 609 (1998) ("[s]tatutory interpretations that 'render superfluous other provisions in the same enactment' are strongly disfavored"); *Hohn v. United States*, 524 U.S. 236, 249 (1998) (same); *Kawaauhau v. Geiger*, 523 U.S. 57 (1998) (same); *Freytag v. Commissioner*, 501 U.S. 868, 877 (1991) (same).

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12. S. Rep. No. 95-631, at 98 (1978).

13. "[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *see also Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980) ("cases of statutory construction . . . begin, of course, with the language of the statute"); *Southeastern Community College v. Davis*, 442 U.S. 397, 405 (1979) (same).

In this instance, the court of appeals concluded that the statutory term "service" added nothing to the preemptive scope of the statute not already embraced by the other two words in the series — "price" and "route." Specifically, the court concluded that

> Congress used the word "service" in the phrase "[price], route, or service" in the ADA's preemption clause to refer to the prices, schedules, origins, and destinations of the point-to-point transportation of passengers, cargo, or mail.

Pet. App. 4a.

This cannot be. Each of the examples given by the court is already embraced within — or synonymous with — one of the other two words in the series. The prices an airline charges are explicitly covered. "Schedules," "origins" and "destinations" define an airline's "routes." If the Court is to give effect "to every word, clause, and sentence of [the] statute," there must be more to the meaning of the term "service" than the court of appeals was willing to admit.

When an interstate compact attempted to enforce a similarly constricted reading of the preemption provision — one that "read the words 'related to' out of the statute" — this Court granted certiorari to correct the error, because such an unwarranted expansion of state and local regulatory power undermined Congress's legislative design. *Morales*, 504 U.S. at 385. Certiorari is warranted here for the same reason.

B. The Construction Given The Statute Below Is Inconsistent With This Court's Previous Guidance

Apart from this fundamental principle of statutory construction, the artificial construction given the statute below is at odds with this Court's prior opinion on the subject. In *American Airlines v. Wolens*, 513 U.S. 219 (1995), the Court instructed that

> the ban on enacting or enforcing any law "relating to [prices], routes, or services" is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean "States may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier."

Id. at 229 n.5 (citation omitted).

As construed by the court below, the ADA would serve no "overarching deregulatory purpose"; indeed, it would work as an incubator for regulation. Every state would be authorized to "impose [its] own public policies" on the in-flight services and operations of an airline, regardless of its impact on the national transportation system, so long as it does so without dictating "prices, schedules, origins and destinations of the point-to-point transportation of passengers." Pet. App. 4a.

Thus, if Salt Lake City decided to ban alcoholic beverages on flights into and out of its airport it could — because the Act does not preempt local regulation of "an airline's provision of in-flight beverages." Pet. App. 5a. If California decided that its state interests would be served

by *compelling* airlines to serve wine on board flights (presuming that such a compulsion would aid its vintners), it could because the Act does not preempt local regulation of "an airline's provision of in-flight beverages." *Id.* And if the result of these two local regulations is that no airline can provide direct service between San Francisco and Salt Lake City, in the Ninth Circuit's view the ADA's preemption clause is not implicated because neither jurisdiction has attempted to dictate "prices, schedules, origins and destinations of the point-to-point transportation of passengers." Pet. App. 4a.

This regulatory nightmare is not mere hypothesis. In *Tall Club of Silicon Valley v. American Airlines*, 2000.WL 868524 (N.D. Cal. June 19, 2000), for example, a group of individuals sued a number of ATA members under California state law to require the airlines to reserve a certain number of seats with additional leg room for passengers over 6'2" tall. Relying on the Ninth Circuit construction at issue in this case, the district court concluded that the ADA does not prevent states and localities from regulating the configuration of seats in the cabins of ATA- member aircraft. The court reasoned that the term "services" applies only to "such things as frequency and scheduling of transportation, and to the selection of markets. . . ." *Id.* at *3.

Under this construction of the ADA, every community would be free to "impose [its] own public policies," *Wolens*, 513 U.S. at 229 n.5, on countless details of airline services. Congress has decided, however, that, as a practical matter, these matters can rationally be subject to "only one standard of regulation." S. Rep. No. 95-631, at 98 (1978). The court of appeals erred, and *certiorari* is warranted.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

ROBERT S. SPAN
Counsel of Record
NEAL D. MOLLEN
PAUL, HASTINGS, JANOFSKY
& WALKER LLP
Attorneys for Amicus Curiae
Air Transport Association of America
555 South Flower Street
Los Angeles, California 90071
(213) 683-6000

APPENDIX

APPENDIX — RELEVANT CASES IN THE COURTS OF APPEALS AND THE DISTRICT COURTS

COURT OF APPEALS

Aloha Islandair Inc. v. Tseu, 128 F.3d 1301 (9th Cir. 1997)

American Airlines, Incorporated v. Department of Transportation, 202 F.3d 788 (5th Cir. 2000)

Charas v Trans World Airlines, Inc., 160 F.3d 1259 (9th Cir. 1998)

Duncan v. Northwest Airlines, Inc., 208 F.3d 1112 (9th Cir. 2000)

Gee v. Southwest Airlines, 110 F.3d 1400 (9th Cir. 1997)

Harris v. American Airlines, Inc., 55 F.3d 1472 (9th Cir. 1995)

Hodges v. Delta Airlines, Inc., 44 F.3d 334 (5th Cir. 1995)

Musson Theatrical, Inc. v. Federal Express Corporation, 89 F.3d 1244 (6th Cir. 1996)

Newman v. American Airlines, Inc., 176 F.3d 1128 (9th Cir. 1999)

Parise v. Delta Airlines, Inc., 141 F.3d 1463 (11th Cir. 1998)

Smith v. America West Airlines, Inc., 44 F.3d 344 (5th Cir. 1995)

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Smith v. Comair, Incorporated, 134 F.3d 254 (4th Cir. 1998)

Taj Mahal Travel, Inc. v. Delta Airlines Inc., 164 F.3d 186 (3d Cir. 1998)

Travel All Over The World, Inc. v. Kingdom of Saudi Arabia, 73 F.3d 1423 (7th Cir. 1996)

United Airlines, Inc. v. Mesa Airlines, Inc., 219 F.3d 605 (7th Cir. 2000)

Wellons v. Northwest Airlines, Inc., 165 F.3d 493 (6th Cir. 1999)

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Air Transport Association of America v. City and County of San Francisco, 992 F. Supp. 1149 (N.D. Calif. 1998)

Air Transportation Excise Tax Litigation, 37 F. Supp. 2d 1133 (D. Minn. 1999)

Barbakow v. USAir, Inc., 950 F. Supp. 1145 (S.D. Fla. 1996)

Breitling U.S.A. Inc. v. Federal Express Corp., 45 F. Supp. 2d 179 (D. Conn. 1999)

Cash America Pawn, L.P. v. Federal Express Corporation, 109 F. Supp. 2d 513 (N.D. Tex. 2000)

Chrissafis v. Continental Airlines, Inc., 940 F. Supp. 1292 (N.D. Ill. 1996)

Chukwu v. Board of Directors British Airways, 889 F. Supp. 12 (D. Mass. 1995)

Chukwu v. Board of Directors Varig Airline, 880 F. Supp. 891 (D. Mass. 1995)

Costa v. American Airlines, Inc., 892 F. Supp. 237 (C.D. Calif. 1995)

Diaz Aguasviva v. Iberia Lineas Aereas de Espansa, 902 F. Supp. 314 (D.P.R. 1995)

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Donkor v. British Airways, Corp., 62 F. Supp. 2d 963 (E.D.N.Y. 1999)

Federal Express Corporation v. United States Postal Service, 55 F. Supp. 2d 813 (W.D. Tenn. 1999)

Galbut v. American Airlines, Inc., 27 F. Supp. 2d 146 (E.D.N.Y. 1997)

Greer v. Federal Express, 66 F. Supp. 2d 870 (W.D. Ken. 1999)

Hijacking of Pan American World Airways, Inc. Aircraft at Karachi International Airport, Pakistan on September 5, 1986 v. Pan American World Airways, Inc., 920 F. Supp. 408 (S.D.N.Y. 1996)

Huntleigh Corporation v. Louisiana State Board of Private Security Examiners, 906 F. Supp. 357 (M.D. La. 1995)

Kelley v. United Airlines, Inc., 986 F. Supp. 684 (D. Mass. 1997)

Lewis v. Continental Airlines, Inc., 40 F. Supp. 2d 406 (S.D. Tex. 1999)

Manning v. Skywest Airlines, 946 F. Supp. 767 (C.D. Calif. 1996)

McLaughlin v. TWA Getaway Vacations, Inc., 979 F. Supp. 174 (S.D.N.Y. 1997)

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Nazarian v. Compagnie Nationale Air France, 989 F. Supp. 504 (S.D.N.Y. 1998)

Peterson v. Continental Airlines, Inc., 970 F. Supp. 246 (S.D.N.Y. 1997)

Price v. Delta Airlines, Inc., 5 F. Supp. 2d 226 (D. Vt. 1998)

Rowley v. American Airlines, 875 F. Supp. 708 (D. Ore. 1995)

Sakellaridis v. Polar Air Cargo, Inc., 104 F. Supp. 2d 160 (E.D.N.Y. 2000)

Seals v. Delta Air Lines, Inc., 924 F. Supp. 854 (E.D. Tenn. 1996)

Somes v. United Airlines, Inc., 33 F. Supp. 2d 78 (D. Mass. 1999)

Stearns Airport Equipment Co., Inc. v. FMC Corporation, 977 F. Supp. 1263 (N.D. Tex. 1996)

Stone v. Continental Airlines, Inc., 905 F. Supp. 823 (D. Haw. 1995)

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Wellons v. Northwest Airlines, Inc., 999 F. Supp. 941 (E.D. Mich. 1996)

Wine and Spirits Wholesalers of Massachusetts, Inc. v. Net Contents, Inc., 10 F. Supp. 2d 84 (D. Mass. 1998)

Woodson v. US Airways, Inc., 67 F. Supp. 2d 554 (M.D.N.C. 1999)